

110TH CONGRESS
2D SESSION

S. 2644

To clarify and improve information for members and former members of the Armed Forces on upgrades of discharge, to prohibit personality disorder discharges in cases of post-traumatic stress disorder and traumatic brain injury, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2008

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To clarify and improve information for members and former members of the Armed Forces on upgrades of discharge, to prohibit personality disorder discharges in cases of post-traumatic stress disorder and traumatic brain injury, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CLARIFICATION AND IMPROVEMENT OF INFOR-**
4 **MATION FOR MEMBERS AND FORMER MEM-**
5 **BERS OF THE ARMED FORCES ON UPGRADES**
6 **OF DISCHARGE.**

7 (a) REQUIRED NOTICES.—

1 (1) NOTICE THAT UPGRADE IS NOT AUTO-
2 MATIC.—

3 (A) IN GENERAL.—Each member of the
4 Armed Forces who is being considered for or
5 processed for an administrative or any other
6 type of discharge shall receive written notice
7 that an upgrade in the characterization of dis-
8 charge will not automatically result from review
9 of the discharge by a board of review under
10 Section 1533 of title 10, United States Code.
11 The notice shall be dated and shall be provided
12 to the member at least 30 days prior to any
13 deadline to elect a particular characterization or
14 type of discharge or manner of processing.

15 (B) RELATED CLARIFICATION.—The notice
16 of discharge issued to a member of the Armed
17 Forces upon discharge may not contain or in-
18 clude any information, references, or other ma-
19 terial that is inconsistent with the notice re-
20 quired under subparagraph (A).

21 (2) NOTICE OF RIGHT TO OBTAIN LEGAL COUN-
22 SEL.—

23 (A) IN GENERAL.—The written notice re-
24 quired under paragraph (1) shall also advise
25 the member in bold letters that the member has

1 the right to meet with and discuss his or her
2 discharge options with military legal counsel
3 prior to electing a characterization or type of
4 discharge or manner of processing. The notice
5 must provide the name, rank, phone number,
6 email address, and physical address of the mili-
7 tary legal counsel responsible for providing legal
8 advice to members.

9 (B) DELAY IN PROCESSING.—Processing
10 for the discharge of a member of the Armed
11 Forces cannot proceed until the member has ei-
12 ther met with military legal counsel or elected
13 in writing not to do so. A member must be
14 given at least 5 duty days after meeting with
15 military legal counsel to make an election re-
16 garding characterization or type of discharge or
17 manner of processing.

18 (3) ACKNOWLEDGMENT OF RECEIPT OF NO-
19 TICE.—A member of the Armed Forces receiving no-
20 tices under paragraphs (1) and (2) shall be required
21 to acknowledge receipt of such notices by placement
22 of his or her initials or other identifying sign or
23 symbol next to the paragraph or paragraphs that
24 contain such notices. The member shall be provided
25 with a copy of the initialed notices, and a copy of

1 such notices shall be retained in any personnel or
2 other files maintained on such member by the
3 Armed Forces.

4 (b) ENHANCEMENT OF INFORMATION ON APPLICA-
5 TION FOR UPGRADE OF DISCHARGE.—Each Secretary
6 concerned shall make available to the public through an
7 Internet website available to the public and by other ap-
8 propriate mechanisms, information on the means by which
9 former members of the Armed Forces under the jurisdic-
10 tion of such Secretary may apply for a review and upgrade
11 of their discharge from the Armed Forces under section
12 1553 of title 10, United States Code.

13 (c) ANNUAL REPORTS ON ACTIONS BY BOARDS OF
14 REVIEW.—

15 (1) IN GENERAL.—Each Secretary concerned
16 shall, on an annual basis, make available to the pub-
17 lic information on the reviews of discharge or dis-
18 missal undertaken under section 1553 of title 10,
19 United States Code, by boards of review under the
20 jurisdiction of such Secretary during the preceding
21 year. The information shall include, for each Armed
22 Force, the following:

23 (A) The number of motions for review re-
24 ceived by the boards of review during the year.

1 (B) The number of reviews conducted by
 2 the boards of review during the year.

3 (C) The number of discharges upgraded as
 4 a result of the reviews referred to in subpara-
 5 graph (A), set forth by aggregate number of
 6 discharges so upgraded and by number of each
 7 type of discharge so upgraded.

8 (2) PROTECTION OF PRIVATE INFORMATION.—

9 Each Secretary concerned shall ensure that the in-
 10 formation on reviews made available to the public
 11 under paragraph (1) does not include any personal
 12 information regarding the members of the Armed
 13 Forces the discharges and dismissals of whom are
 14 the subject of such reviews.

15 (d) SECRETARY CONCERNED DEFINED.—In this sec-
 16 tion, the term “Secretary concerned” has the meaning
 17 given that term in section 101(a) of title 10, United States
 18 Code.

19 **SEC. 2. ENHANCEMENT OF NOTICE TO MEMBERS OF THE**
 20 **ARMED FORCES ON CONSEQUENCES OF DIS-**
 21 **CHARGE STATUS FOR BENEFITS AND SERV-**
 22 **ICES THROUGH THE FEDERAL GOVERNMENT.**

23 (a) IN GENERAL.—The Secretary of Defense shall
 24 take appropriate actions to ensure that each member of
 25 the Armed Forces receives at the time of discharge from

1 the Armed Forces comprehensive information, in writing,
 2 on the effect of the discharge status of such member on
 3 the benefits and services available to such member through
 4 the Department of Defense, the Department of Veterans
 5 Affairs, and any other department or agency of the Fed-
 6 eral Government providing benefits or services to individ-
 7 uals in their status as former members of the Armed
 8 Forces.

9 (b) INFORMATION ON UPGRADE OF DISCHARGE.—
 10 The information provided pursuant to subsection (a) shall
 11 include the information described in section 1(b).

12 **SEC. 3. REQUIREMENT TO TEST MEMBERS OF THE ARMED**
 13 **FORCES FOR CERTAIN INJURIES AND CONDI-**
 14 **TIONS BEFORE DISCHARGING FOR PERSON-**
 15 **ALITY DISORDERS.**

16 (a) TESTING REQUIREMENT.—The Secretary of a
 17 military department may not discharge from the Armed
 18 Forces for personality disorder any member of the Armed
 19 Forces unless such member has undergone testing by the
 20 Department of Defense for post-traumatic stress disorder,
 21 traumatic brain injury, and any related mental health dis-
 22 order or injury prior to final action with respect to such
 23 discharge.

24 (b) RESTRICTIONS ON DISCHARGE FOR PERSON-
 25 ALITY DISORDER.—The Secretary of a military depart-

1 ment may not discharge from the Armed Forces for per-
 2 sonality disorder a member of the Armed Forces deter-
 3 mined by the Secretary of Defense to suffer from post-
 4 traumatic stress disorder, traumatic brain injury, or any
 5 related mental health disorder or injury.

6 **SEC. 4. WAIVER OF STATUTE OF LIMITATIONS APPLICABLE**
 7 **TO CERTAIN REVIEWS OF DISCHARGES FOR**
 8 **PERSONALITY DISORDERS.**

9 Section 1553(a) of title 10, United States Code, is
 10 amended—

11 (1) in the second sentence, by striking “A mo-
 12 tion or request for review” and inserting “Except as
 13 provided in the following sentence, a motion or re-
 14 quest for review”; and

15 (2) by inserting after the second sentence the
 16 following: “The Secretary of Defense shall waive the
 17 15 year time limit specified in the preceding sen-
 18 tence in the case of a motion or request for review
 19 of a discharge for personality disorder of a former
 20 member who has been diagnosed by the Secretary of
 21 Veterans Affairs with post-traumatic stress disorder,
 22 traumatic brain injury, or any related mental health
 23 disorder or injury.”.

1 **SEC. 5. APPLICABILITY.**

2 Nothing in this Act or the amendments made by this
3 Act shall be construed to authorize or require the upgrade
4 of a bad conduct discharge or dishonorable discharge im-
5 posed on a member of the Armed Forces as the result of
6 a conviction by court-martial, unless the conviction is over-
7 turned on appeal.

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